IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7724 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JADAVJIBHAI RAVJIBHAI SAKHIYA

Versus

ASSISTANT TOWN PLANNER

Appearance:

1. Special Civil Application No. 7724 of 1995

MR SURESH M SHAH for Petitioner No. 1

MR MEHUL S SHAH for Petitioner No. 1

MR BP TANNA, SR. ADVOCATE WITH MS MAHROOK KERRAVALA for Respondents.

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 12/01/2005

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India, the petitioners who are alleged to

be the occupiers of the property in question which is affected due to the town planning scheme which has become final have challenged the legality and validity of the notices dated 2.9.1995 issued by the respondent no.1 - Assistant Town Planner, Rajkot Municipal Corporation, Rajkot issued under Section 68 of the Gujarat Town Planning & Urban Development Act, 1976 (hereinafter referred to as the "Act) and the Gujarat Town Planning & Urban Development Rules, 1979 (hereinafter referred to as the "Rules").

2. It appears from the record that the property in question which is alleged to be occupied by the petitioners No.2 to 4 as tenants is falling within 24 meter Town Planning Road as per the Town Planning Scheme which has become final vide notification dated 12.7.1991 and which has come into effect from 16.8.1991. On coming into force of the Town Planning Scheme, the petitioner no.1 who is the owner of the land/proper in question and the petitioner no.2 to 4 who are alleged to be in occupation of the shops in question as tenants came to be served with the impugned notice dated 2.9.1995 under Section 68 of the Act read with Rule 33 of the Rules by which they are directed to vacate the land in question/the property in question which is falling within the 24 meter Town Planning Road. Being aggrieved and dissatisfied with the same, the petitioners have preferred the present petition under Article 227 of the Constitution of India.

3. Shri Mehul S Shah, Learned Advocate appearing for the petitioners had submitted only one contention that the notices which are issued upon the petitioners under Rule 33 of the Rules is not in accordance with the provisions of Rule 33 of the Rules and no particulars are given alongwith the aforesaid notices to the effect that the petitioners are not informed which portion of the land would be going in the Town Planning Road and which portion of the land/property of the petitioners are required to be demolished. It is also further submitted that before issuing the aforesaid notices, no opportunity of hearing has been given to any of the petitioners.

4. Shri B.P.Tanna, Learned Senior Advocate appears on behalf of the respondent Corporation. An affidavit in reply is filed on behalf of the respondents. It is submitted that the Town Planning Scheme has become final after due procedure of law and the same has come into effect w.e.f. 16.8.1991. It is also further submitted that at every point of time, the petitioner no.1 was heard and after hearing him, the Town Planning Scheme has

become final. It has also further submitted that so far as the contention on behalf of the petitioners that the petitioners are not informed which portion of the land/property would be affected on the roadline under the Town Planning Scheme/24 meter Town Planning Road, Shri Tanna has submitted that in fact, the petitioner no.1 was already served with a sketch and he is also informed which portion of his property would be going under the 24 meter Town Planning Road under the finalised Town Planning Scheme which is disputed by the petitioner. However, without going into the said allegation and counter-allegation, it is directed that the petitioners may appear before the respondent no.1 on 31.1.2005 and the respondent no.1 and/or its officers are directed to apprise/inform and/or to give a copy of the sketch to the petitioners and inform the petitioners which portion of the land/property occupied by the petitioners will be going on under the finalised Town Planning Scheme under the 24 meter Town Planning Road and it will be desirous of giving the sketch to the petitioner by the respondent no.1 and to depute some responsible officer to go on the spot and show the petitioners' actual measurement and the property which is to be demolished for the purpose of widening of the road under the 24 meter Scheme which has become final and thereafter, take appropriate action on the notices dated 2.4.1995. It will be open for the petitioners to point out with regard to measurement also which may be considered by the appropriate authority in accordance with the Town Planning Scheme which has become final. With these observations and directions, the present petition is disposed of. Rule discharged. Adinterim relief granted earlier, if any, shall stand discharged.

(M.R.Shah, J)
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